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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 973

BEL OIL CORPORATION,

Appellant,

versus

ROLAND COCREHAM, COLLECTOR OF REVENUE, STATE OF LOUISIANA (Substituted for Robert L. Roland),

Appellee.

On Appeal from the Supreme Court of the State of Louisiana.

JURISDICTIONAL STATEMENT.

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No.

BEL OIL CORPORATION,

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ROLAND COCREHAM, COLLECTOR OF REVENUE, STATE OF LOUISIANA (Substituted for Robert L. Roland),

Appellee.

On Appeal from the Supreme Court of the State of Louisiana.

JURISDICTIONAL STATEMENT.

To the Honorables, the Chief Justice and Associate Justices of the Supreme Court of the United States:

This suit was brought under L.R.S. 47:1576 for the recovery of taxes paid under protest by Bel Oil Corporation to the Collector of Revenue of the State of Louisiana, which statute provides that taxes claimed to be invalid may be paid under protest to the Collector of Revenue and suit may be brought for recovery thereof; that the said taxes so paid under that statute are to be segregated and held in escrow pending final determination by the court of last resort in this suit. See Appendix E, page 27a.

Appellant appeals from the judgment of the Supreme Court of the State of Louisiana affirming the judgment of the Nineteenth Judicial District Court, Parish of East Baton Rouge, State of Louisiana, which sustained an exception of no cause or right of action filed by the defendant to the petition of Bel Oil Corporation attacking the constitutionality of the amendment to the Louisiana Severance Tax Statute which raised the severance tax from three-tenths (.3¢) cent to two and three-tenths (2.3¢) cents per thousand cubic feet of natural gas severed from the soil by the appellant, who is a "natural gas company" under the provisions of the Natural Gas Act, U.S. Code, Title 28, Chapter 15B, Section 717 *et seq.*

The appellant's original petition alleged that petitioner was a "natural gas company" producing gas in the State of Louisiana, selling and delivering approximately two-thirds of the gas it produced to United Gas Company, Texas Gas Transmission Pipeline Company and Transcontinental Gas Pipe Line Company, all of whom transmitted the natural gas purchased from appellant for resale in other states. Petitioner further alleged that the natural gas produced by appellant from its twenty-one producing wells was transmitted through its pipeline system into its processing plant where it was commingled, processed and delivered to the three interstate pipeline companies, one-third of the gas being sold and delivered to a state user.

The severance tax act under attack by appellant placed the incidence of the tax on the producer owner the instant it left the wellhead. Appellant's petition further alleged that such a tax constituted a burden on interstate commerce and was repugnant to the provisions of the Commerce Clause, Subdivision 3, Section 8, Article 1 of the Constitution of the United States. Appellant's peti-

tion further contends that since appellant is a "natural gas company" the Federal Government has exclusive jurisdiction to regulate the rate of wholesale of natural gas which is transmitted and resold in other states, and, therefore, the amendment in the Extra-ordinary Session of the Louisiana Legislature for 1958, R.S. 47:632, 633, 635, 640, 641 and 645, as amended by Act of that Session, affected the rate on wholesale of natural gas in interstate commerce.

Appellant submits this statement to show that the Supreme Court of the United States has jurisdiction of this appeal and that substantial questions are presented.

OPINION BELOW

The opinion of the Supreme Court of the State of Louisiana is reported in the supplement to 137 So. 2d 208 and is printed in Appendix A herein, *infra* page 1a.

JURISDICTION

This suit was originally brought in the Nineteenth Judicial District Court, East Baton Rouge Parish, Louisiana, and attacked the constitutionality of Act 2 of the Extra-ordinary Session of the Louisiana Legislature for 1958 which amended Louisiana Revised Statutes 47:632, 633 and 635, *et seq.* and raised the former severance tax statute on natural gas from three-tenths (.3¢) cent to two and three-tenths (2.3¢) cent per mcf, which sections as amended are printed in Appendix B, *infra* page 16a.

The defendant Collector filed peremptory exceptions of no cause of right of action attacking the plaintiff's petition. These exceptions were maintained by the trial court and appellant's suit was dismissed as stating no cause or right of action. Appellant appealed to the Supreme Court of the State of Louisiana (the highest court

of the state) and on January 15, 1962 the Louisiana Supreme Court affirmed the judgment of the trial court. Appellant applied for a rehearing which was denied by the Louisiana Supreme Court on February 19, 1962 (R-80). Appellant is appealing herein to this Court for relief from said judgment.

The jurisdiction of the Supreme Court of the United States to review this decision by direct appeal is conferred by 28 U.S. Code, Section 1257 (2), which provides:

> "§ 1257. State courts; appeal; certiorari
>
> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> * * * * *
>
> (2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity."

The following decisions sustained the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case:

Eureka Pipeline Co., Iffy. in Err. v. Walter S. Hallanan, State Commissioner of West Virginia, 66 L. Ed. 227, 257 U.S. Ct. 264-265 (decided Dec. 12, 1921);

Michigan-Wisconsin Pipe Line Co. v. Calvert, 347 U.S. 157, 98 L. Ed. 588 (decided Feb. 8, 1954);

Phillips Petroleum Company v. State of Wisconsin, et al, U.S. Reports 347, pages 672, *et seq.*, 98 L. Ed. 1035 (decided by Supreme Court of U.S. in June, 1954);

United Fuel Gas Co. v. Hallanan, 257 U.S. 277, 42

S. Ct. 105, 66 L. Ed. 234 (decide Dec. 21, 1921);
Horwitt v. Horwitt, D.C. Conn. (1950) 90 F. Supp. 528;
Allied Stores of Ohio, Inc. v. Bowers, 79 S. Ct. 437, 358 U.S. 522, 3 L. Ed. 2d 480;
International Harvester Co. v. Wisconsin Department of Taxation, (1944) 64 S. Ct. 1060, 322 U.S. 435, 88 L. Ed. 1373;
Storaasli v. State of Minnesota, 51 S. Ct. 354, 283 U.S. 57, 75 L. Ed. 830.

Since this appeal involves the validity of a state tax statute under the Commerce Clause of the Federal Constitution and the Natural Gas Act, 28 U.S. Code, Chapter 15B, and the petition alleges that the tax is a burden on interstate commerce, and is an attempt by the state to regulate the rate on wholesale of natural gas by a "natural gas company" into interstate commerce, it appears that there could be no question but what this Court has jurisdiction over the issues involved and raised in appellant's original petition herein.

QUESTIONS PRESENTED

The following questions are presented by this appeal:

1. Whether the court below erred in affirming the judgment of the trial court dismissing this suit on the ground that the appellant's original petition did not state a cause or right of action as an attack on the validity of the two (.02¢) cents additional severance tax as repugnant to the Commerce Clause of the Federal Constitution and the Natural Gas Act.

2. Whether the court below erred in holding that the added two (.02¢) cents severance tax on the producing owner of the gas did not affect interstate commerce and constitute a burden thereon and a regulation of the rate

on wholesale of natural gas transmitted and sold into interstate commerce.

3. Whether the court below erred in holding that the cases of *Deep South Oil Company of Texas v. Federal Power Commission*, 247 F. 2d 882 (decided June 1957), *Humble Oil & Refining Co. v. Federal Power Commission*, 247 Fed. 2d 903 (decided June, 1957), *Phillips Petroleum Company v. State of Wisconsin, et al*, U.S. Reports 347, pages 672, *et seq.*, 98 L. Ed. 1035 (decided by Supreme Court of U.S. in June, 1954), *Shell Oil Company v. Federal Power Commission*, 247 Fed. 2d 900 (decided June, 1957) and other similar cases, which involved the question of whether or not a producer of natural gas who sold gas for transmission and resale in interstate commerce was under the sole jurisdiction of the Federal Power Commission, were not apposite to the alleged facts of this case for the reason that necessarily those cases held the sale of or the tax on natural gas at the wellhead affected interstate commerce.

4. Whether the court below erred in holding that Act 2 of the Extra-ordinary Session of the Louisiana Legislature for 1958 was a local tax, similar to a production tax, and, therefore, did not affect natural gas sold by a "natural gas company" into interstate commerce for resale in other states.

5. Whether the court below was in error in holding that the Legislature, in raising the severance tax from three-tenths cent to two and three-tenths cents per mcf., were not making an invalid attempt to substitute the added two cents severance tax act in lieu of the Gas Gathering Tax Acts, R.S. 47:671 through 681.

6. Whether the court below erred in not holding, as

was contended by appellant in his brief and argument in the Supreme Court of Louisiana, that this added severance tax on the owner of the gas for separating the gas from the soil would permit a multiple tax in other states for separating the gas from the interstate pipelines.

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

(a) Louisiana Revised Statutes, 47:632, 633 and 635, 640, 641 and 645 as amended by Act 2 of the Extra-ordinary Session of the Louisiana Legislature in 1958, are printed in Appendix B, *infra* page 16a.

Prior to the Extra-ordinary Session of the Louisiana Legislature of 1958 the pertinent provisions of Section 633 read as follows:

> "on gas, three-tenths (.3) cent per thousand cubic feet."

Paragraph 9 of the original statute was amended by Act 2 of the Extra-ordinary Session of the Legislature to read as follows:

> "(9) On gas, two and three-tenths (2.3¢) cents per thousand cubic feet."

Under Louisiana R.S. 47:634. Definitions, we find:

> "The following terms as used in this Part shall have the following meanings ascribed to them:
>
> "(1) 'Owner' means owner at the time of severance.
>
> • • • • •
>
> "(3) 'Severed' means the point at which the natural resources are severed from the surface of the earth or water."

(b) Louisiana Revised Statutes 47:671, 673 and 678 are printed in Appendix C, *infra* page 23a.

(c) Louisiana Revised Statutes 47:681 (1) is printed in Appendix D, *infra* page 25a.

(d) The Commerce Clause, Subdivision 3, Section 8, Article 1 of the Constitution of the United States.

(e) Natural Gas Act, 28 U.S.C.A. Chapter 15B, Section 717, *et seq.*

Appellant contends that since this additional two cents severance tax was a substitute for the unconstitutional gas gathering tax, it is repugnant to the Commerce Clause of the Federal Constitution and the Natural Gas Act on the following grounds:

(1) Since the tax is on the owner of this gas after severance, two-thirds thereof entering interstate pipelines in a continuous uninterrupted flow of all of this gas from the wellhead, it affects interstate commerce and Bel Oil Corporation being a "natural gas company" the Federal Power Commission has exclusive jurisdiction over the wholesale or transportation of natural gas and the price at which it can be sold.

(2) That said tax, under the allegations of the original petition herein, would permit a multiple tax on gas going into interstate commerce for the reason that other states could also put a tax on the severance or separation of gas from the pipeline to local distribtuors.

(f) In Louisiana Revised Statutes 47:1576, Appendix E, *infra* page 27a, the last paragraph provides:

"Upon request of a person and proper showing by

> such person that the principle of law involved in an additional assessment is already pending before the courts for judicial determination, such person, upon agreement to abide by the decision of the courts, may pay the additional assessment under protest, but need not file an additional suit. In such cases the tax so paid under protest shall be segregated and held by the collector until the question of law involved has been determined by the courts and shall then be disposed of as therein provided."

The specific amount sued for in the original petition in this suit is for taxes assessed for the month of December, 1958. The petitioner has complied with the provisions of the paragraph of R.S. 47:1576 quoted above by paying the taxes levied each additional month since December under protest, and with each such monthly payment has agreed to abide by the final decision of the courts of the issues involved in this suit. All of those payments are likewise required to be segregated and held by the collector until the questions involved in this suit have been terminated and disposed of. Therefore, the specific amount sued for, plus the additional monthly payments of this tax paid to the collector since December, 1958, are the sums involved in this suit.

STATEMENT OF FACTS

Since this is a suit really on the question of whether the original petition herein stated a cause or right of action, the facts involved in this suit are those facts which are alleged in plaintiffs' original petition, which, for the purpose of trial of these exceptions, are presumed to be true.

Paragraph 3 of plaintiffs' petition **(R-4)** alleges that Bel Oil Corporation is a corporation incorporated under

the laws of the State of Louisiana with its domicile in Calcasieu Parish, Louisiana; that Bel is a "natural gas company" under the provisions of the Federal Natural Gas Act and holds Certificate of Convenience and Necessity issued to it by the Federal Power Commission with respect to gas produced, sold to others for transportation and transported by it in interstate commerce for sale in other states.

Paragraph 4 of plaintiffs' petition **(R-4)** alleges that Bel owns the entire interest in certain wells located in the North Elton Field in Allen Parish, Louisiana, which wells are producing gas at or near the wellhead; that a portion of the gas is sold to United Gas Corporation, Transcontinental Gas Pipeline Company and Texas Gas Transmission Corporation, all of which companies are purchasing, transporting and selling in interstate commerce the gas purchased from Bel in the North Elton Field in Louisiana; that other gas is sold to one of the original petitioners, Calcasieu Paper Company, Inc., which latter company transports the gas it purchases to its paper plant through its pipeline to Elizabeth Louisiana, for use in operating its paper manufacturing business.

Paragraph 5 of plaintiffs' petition **(R-4)** states that petitioners attached to their petition a schematic flow diagram of Bel Oil Corporation's plant and a plat or map showing the location of said plant, and showing the location and designating the several wells which are owned by Bel and from which gas is produced, sold and delivered, both plats showing the names and points of delivery of gas sold by Bel to the above designated companies, which plats were prepared by the State Revenue Department's engineers and are marked for identification as PL Ex-

hibit "A-1" and "A-2" respectively. These maps appear in the **record at pages 14 and 15.**

Paragraph 6 of plaintiffs' petition **(R-5)** alleges that Bel transports said gas after severance at or near the wellhead, (at which point the tax is levied), and through its pipeline system transports all of such produced gas into a header or manifold located at its plant in Allen Parish, which plant, as shown by diagram "PL A-1", dehydrates said gas, extracts foreign matter through separators, compressors and hydrators, and other chemicals such as protane, butane distillate, etc.; that at or near the header all of the gas produced and so transported by Bel into its said plant is commingled and after being processed in the Bel plant is delivered to the respective purchasers above named at points shown on said diagram marked "PL A-1".

Paragraph 7 of plaintiffs' petition **(R-5)** alleges that all of the gas so purchased by the three named interstate gas carriers and Calcasieu Paper Company, and after said tax is levied thereon, from the point where it leaves the wellhead of the several gas wells moves in a continuous flow from the wellhead through the plant into the pipelines of the several purchasers, most of which gas enters interstate pipelines and is transported by them across the state line and sold to purchasers in other states.

Paragraph 9 of the petition **(R-6)** alleges that the severance tax in the amount of $5,372.64 was paid under protest and notice was given to the Collector of Revenue that suit would be filed to recover the amount so paid.

Paragraph 14 of the petition **(R-8)** alleges that the original definition of "gas gathering" placed the incidence of the tax at a point after it passed through the last

meter of the producer and upon the first purchaser taking possession of the gas after passing such meter; that the State of Texas had a similar gas gathering tax which was held to be unconstitutional as a burden on interstate commerce in the case of *Michigan-Wisconsin Pipeline Company v. Robert S. Calvert, et al* and *Panhandle Eastern Pipe Line Company v. Robert S. Calvert, et al*, 347 U.S. 157, 98 L. Ed. 983; that decision was handed down in February, 1954 and the Revenue Department and the State of Louisiana, in order to evade the effects of that decision holding the Texas gas gathering tax unconstitutional, in the Legislative Session held in May and June of 1954 amended the gas gathering tax act of 1948 and changed the definition of "gas gathering" to its present form, making the incidence of the tax on the transportation of gas after severance and before reaching the first meter at or near the wellhead; * * *.

Paragraph 15 of the petition **(R-9)** alleges that Acts 2 and 3 of the Extra-ordinary Session of the Legislature of 1958 were adopted as companion bills; that the amendment to the Severance Tax Act, increasing the severance tax on gas from three-tenths cent to two and three-tenths cents, contains a provision to the effect that if the court held the gas gathering tax constitutional that the severance tax should revert back to three-tenths cents; that Act 3 of the same 1958 Session suspended the collection of the gas gathering tax until such time as the question of its validity and constitutionality is decided. Petitioners further contend that it was the intention of the Legislature, as shown by these two companion bills, to evade the effects of the *Michigan-Wisconsin* case *(supra)* and other cases holding to the effect that natural gas was in interstate commerce from the time it left the wellhead, if any part of it was destined for interstate commerce;

that said acts and former changes and definitions of the gas gathering tax act were passed solely for the purpose of attempting to evade and escape from their gas gathering tax being held unconstitutional; that the original gas tax adopted by the Legislature in 1940, and subsequent gas gathering tax acts adopted by the Legislature thereafter, were all attempts to tax gas which might be transported and sold into interstate commerce, and although Act 2 of the Extra Session of 1958 calls this a "severance tax", it is in fact the same type of tax which was provided for in the previous gas gathering tax acts.

Acts 2 and 3 of the Extra-ordinary Session of 1958 were incorporated into the Louisiana Revised Statutes and will be found at Appendix B and Appendix D, respectively.

Since one of the original petitioners, Calcasieu Paper Company, Inc., has been dismissed from this suit under an exception that it is not a proper party, the allegations of this petition which apply only to the claim of Calcasieu Paper Company, Inc. are not referred to herein for the reason that Calcasieu is not an appellant in this case.

The Federal questions, sought to be reviewed with reference to the State act being repugant to the Federal Commerce Clause and the Federal Natural Gas Act were raised in the allegations of the petition, and these issues, in connection with the issue as to whether or not this tax would permit a multiple tax by other states, were raised in appellant's brief and argument in the court below.

Both the District Court and the Supreme Court of Louisiana held that this additional two cents per mcf severance tax on the owner of the gas after leaving the

wellhead was a local tax or a production tax and did not affect interstate commerce, and therefore, notwithstanding the fact that Bel Oil Corporation is a natural gas company under the provisions of 28 USCA Chapter 15B, Section 717, *et seq.*, that the tax was not repugnant to either the Federal Commerce Clause or the Federal Natural Gas Act, and that the tax did not permit a multiple tax since other states could not levy a severance tax. The judgment of the trial court stated in written reasons (R-48):

"• • •

"IT IS ORDERED, ADJUDGED AND DECREED that the exceptions of no cause and no right of action as to both plaintiffs are hereby sustained and the plaintiffs' suit is dismissed at their costs.

"Judgment rendered in open Court at Baton Rouge, Louisiana, on June 8, 1961.

"Judgment signed in open Court at Baton Rouge, Louisiana, this 13th day of June, 1961.

FRED A. BLANCHE, JR.
JUDGE"

The opinion and decree of the Supreme Court of Louisiana, printed in Appendix A, *infra* page 1a, was rendered on January 15, 1962, and a rehearing was denied on February 19, 1962.

For more than a quarter of a century the Louisiana severance tax imposed upon natural gas was three-tenths cent per mcf. Appellant is not suing for recovery of that original three-tenths cent for the reason that it believes that the State is entitled to impose a reasonable severance tax on natural resources to reimburse them for the expense of inspection, enforcement of the tax and expenses in connection with the conservation laws, and

that while the three-tenths cent is more than ample for that purpose, appellant does not desire to raise that issue and is contending only that Act 2 of the Extra-ordinary Session of 1958, which raises the severance tax as a substitute for the prior unconstitutional gas gathering tax, is invalid for the reasons previously related in this statement.

THE QUESTIONS ARE SUBSTANTIAL

I.

Since Appellant Is A Natural Gas Company Under The Provisions Of The Natural Gas Act This Additional Two Cents Severance Tax Imposed Upon It The Instant It Leaves The Wellhead Affects Interstate Commerce And Is Repugnant To The Provisions Of The Commerce Clause Of The Federal Constitution.

The contracts for the purchase of gas by the three interstate pipeline companies and Calcasieu Paper Company, Inc. obviously affect the rate on natural gas sold and transported into other states for resale. It is common knowledge that these contracts by interstate pipeline companies and others are long-term contracts and to impose this additional tax of 700% on this and other natural gas companies affects every long-term contract for the wholesale purchase of natural gas. It is, in effect, an attempt by the State to regulate the rate on natural gas going into interstate commerce, which regulation is exclusively in the Federal Government through its agency, the Federal Power Commission. This additional two cents severance tax not only affects the contract price between the producer and the interstate pipeline companies, but obviously affects any contracts for sale that the pipeline companies have with distributors or consumers in other states. Necessarily, if such additional

two cents tax is held not to be repugnant to the Commerce Clause of the Federal Constitution and to the Federal Natural Gas Act, every such contract for purchase will have to be reconsidered, approved or disapproved by the Federal Power Commission.

This Court considered state acts levying taxes on natural gas, which is sold wholesale for transportation and resale in other states, in the cases of *Michigan-Wisconsin v. Calvert*, 347 U.S. 157, *United Fuel Gas Co. v. Hallanan*, 257 U.S. 277, and *Eureka Pipeline Co. Plff. in Err. v. Walter S. Hallanan, State Commissioner of West Virginia*, 257 U.S. 246-265, and the contract for sale of natural gas at the wellhead in *Phillips Petroleum Company v. State of Wisconsin*, 347 U.S. 672.

This added two cents severance tax on the producing natural gas company as owner of the gas at the instant it leaves the wellhead and before it starts its continuous flow into interstate commerce affects the rate of every long-term contract of wholesale of natural gas sold and delivered to every interstate pipeline company that operates in Louisiana, and especially the three interstate pipeline companies to which this appellant sells gas for resale in other states. It is common knowledge that these contracts by interstate pipeline companies and others are long-term contracts, and to impose this 700% additional severance tax on this and other natural gas companies producing natural gas in Louisiana is in effect an attempt by the State of Louisiana to regulate the contract rate on the wholesale of all Louisiana natural gas sold to interstate pipeline companies.

Federal jurisdiction over the regulation of such sale contracts is expressly taken from the states by Congress in enacting the Natural Gas Act in 1938. The issues

raised here as to whether or not this added two cents severance tax, as a substitute for the Louisiana Gas Gathering Tax Acts which have been held unconstitutional, is a prohibitive regulation of the rate on natural gas in interstate commerce by Louisiana seems to appellant to be obviously a substantial issue.

This tax being imposed upon appellant as owner of the gas, with a lien and privilege on the gas even in the hands of the purchaser if the tax is not timely paid by the owner, is, therefore, a potential tax on the purchasing interstate pipeline carrier. The issue as to whether the state can impose such a tax on a natural gas company is likewise obviously a substantial issue.

As a matter of simple economics this added two cents severance tax will ultimately affect the contract price between the interstate pipeline company and its customers in other states.

This Court considered an attack on state acts levying taxes on natural gas which is sold wholesale for transportation and resale in other states as raising substantial questions in the cases of *Michigan-Wisconsin v. Calvert*, 347 U.S. 157; *United Fuel Gas Co. v. Hallanan*, 257 U.S. 277, and *Eureka Pipeline Co., Plff. in Err. v. Walter S. Hallanan, State Commissioner of West Virginia*, 257 U.S. 246-265, and the contract for sale of natural gas at the wellhead in *Phillips Petroleum Company v. State of Wisconsin*, 347 U.S. 672.

In *Phillips Petroleum v. Wisconsin (supra)*, this Court held:

> " * * *, we believe that the Legislative history indicates a congressional intent to give the commission jurisdiction over the rates of all wholesales

of natural gas in interstate commerce, whether by a pipeline company or not and whether occurring before, during, or after transmission by an interstate pipeline company."

This quoted statement of this Court in the *Phillips Petroleum* case is the law and since this tax is imposed upon the natural gas company before such wholesale of natural gas moves in interstate commerce. The contention of appellant here is that the decision of the court below under attack is definitely in conflict with the law and of the jurisprudence of this Court. It seems to the appellant that the answer to that question is also a substantial one.

In some of the cases cited herein in support of appellant's contention the issues involved the contract price of gas sold at the wellhead. While those cases did not involve a tax on natural gas sold in interstate commerce, they involved the issue as to whether or not the gas, after leaving the wellhead, was in interstate commerce, and appellant contends that the questions involved there were no more substantial than the questions involved in the instant case.

II.

The Interpretation of Pertinent Provisions of the Federal Constitution by the Court Below Was Inappropriately Applied in This Case.

Since the decision of the court below, from which this appeal is taken, involves the interpretation of the Commerce Clause of the Federal Constitution and the Federal Natural Gas Act, and affects the rate on natural gas contracts involving sales and transportation of natural gas for resale in other states, the questions to be answered here are obviously as substantial as were the questions

involved in the cases hereinabove cited.

We believe, therefore, that the questions presented by the appeal are substantial and that they are of public importance.

Respectfully submitted.

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APPENDIX A.

DECISION OF THE SUPREME COURT OF THE STATE OF LOUISIANA

January 15, 1962

Rehearing Denied February 19, 1962

Before Hawthorne, Justice.

Bel Oil Corporation and Calcasieu Paper Company, Inc., both Louisiana corporations, instituted this suit against the Collector of Revenue, State of Louisiana, to recover Louisiana severance taxes of $5372.64 paid under protest for December, 1958, and to be reimbursed for all other such taxes paid in the future during the pendency of this suit.[1] The suit was dismissed on exception of no cause and no right of action, and plaintiffs have appealed.

Article 10, Section 21, of the Louisiana Constitution of 1921 provides:

> "Taxes may be levied on natural resources severed from the soil or water, to be paid proportionately by the owners thereof at the time of severance * * *. Such natural resources may be classified for the purpose of taxation and such taxes may be predicated upon either the quantity or value of the products at the time and place of severance. * * *"

Under the authority of this constitutional provision the Legislature of this state enacted R.S. 47:631 *et seq.*, which, so far as pertinent to the issues here presented, read:

---

[1] The taxes for December, 1958, were paid under protest pursuant to R.S. 47:1576.

"Sec. 631. Imposition of tax

"Taxes as authorized by Section 21 of Article X of the Constitution of Louisiana, are hereby levied upon all natural resources severed from the soil or water, including all forms of timber, including pulp woods, and turpentine and other forest products; minerals such as oil, gas, natural gasoline, distillate, condensate, casinghead gasoline, sulphur, salt, coal, lignite and ores; also marble, stone, gravel, sand, shells and other natural deposits; and the salt content in brine.

"Sec. 632. Taxes payable by owners; lien and privilege created

"These taxes shall be paid by the owner or proportionately by the owners thereof at the time of the severance and become due and exigible quarterly, as herein provided • • •.

"Sec. 633. Rates of tax

"The taxes on natural resources severed from the soil or water, levied by R.S. 47:631 shall be predicated on the quantity severed and shall be paid at the following rates:

• • • • • •

"(9) On gas, two, and three-tenths cents (2.3¢) per thousand cubic feet • • •.

"Sec. 634. Definitions

"The following terms as used in this Part shall have the following meaning ascribed to them:

"(1) 'Owner' means owner at the time of severance.

• • • • • •

"(3) 'Severed' means the point at which the natural resources are severed from the surface of the earth or water."

Plaintiffs in their petition pray for judgment against the collector decreeing:

"(a) That the severance tax act, * * * insofar as it applies to that portion of the gas produced by Bel, commingled with other gas sold and delivered to interstate commerce pipeline companies, and which goes into the pipeline of Calcasieu Paper Company, Inc., is violative of the commerce clause (Subdivision 3 of Section 8 of Article 1) of the Constitution of the United States.

"(b) That the severance tax act is violative of the Louisiana Constitution, particularly Article 10, Section 1, thereof, and the due process clause of the Fourteenth Amendment to the Constitution of the United States and the due process clause of the Louisiana Constitution, in that it is discriminatory and non-uniform as applied to Calcasieu's operations."

They further pray for judgment for the amount of the tax paid under protest and for reimbursement of all other sums paid in the future during the pendency of the suit.[2]

The pertinent facts alleged in the petition are these: Plaintiff Bel Oil Corporation is a natural gas company under the provisions of the federal Natural Gas Act and holds a certificate of public convenience and necessity issued to it by the Federal Power Commission with

[2] Plaintiffs prayed in the alternative that the severance tax be held not applicable to Calcasieu Paper Company under the doctrine of contemporaneous construction. In brief in this Court, however, they state that this prayer on behalf of Calcasieu is abandoned so far as this suit is concerned.

respect to gas produced, sold to others for transportation, and transported by it in interstate commerce for sale in other states. Bel owns the entire interest in certain producing gas well in Allen Parish, Louisiana. Some of the gas being produced from these wells is sold by Bel to United Gas Corporation, Transcontinental Gas Lines, and Texas Gas Transmission Corporation, all of which purchase, transport, and sell in interstate commerce the gas purchased from Bel. Other gas produced by Bel from its wells is sold by it to the other plaintiff, Calcasieu Paper Company, Inc.; and the gas sold to Calcasieu is transported by Calcasieu through a 30 mile pipeline to its paper manufacturing plant at Elizabeth, Allen Parish, Louisiana, and there used by Calcasieu for fuel and in other operations incidental to its paper manufacturing business. Bel transports the gas, after its severance at or near the wellhead, through its pipeline system to its plant (gasoline plant), where the gas enters a header or manifold in which all of the gas produced by Bel is commingled. At Bel's plant the gas is dehydrated, and foreign matters are extracted as well as other chemicals such as protane, butane distillate, etc. After being so processed in the Bel plant the gas is delivered to the various purchasers after passing through a meter into their respective pipelines, including the pipeline owned by Calcasieu Paper Company. The gas sold to these purchasers, three of which are interstate gas carriers, moves in a continuous flow from the wellhead through Bel's plant into the several pipelines of the purchasers, and the greater portion of the gas flowing into the pipelines is passed into other states and sold in interstate commerce.

In the petition it is alleged that the severance tax

here involved was paid by Bel to the collector under protest. It is further alleged that Calcasieu Paper Company entered into a contract to buy gas from Bel at its plant and transport it through Calcasieu's own pipeline to its paper plant in Louisiana some 30 miles away for use as fuel; that in this contract Calcasieu agreed to pay all severance and other taxes which at any time might be assessed against the gas produced by Bel and sold to Calcasieu; that Bel has been reimbursed by Calcasieu for the taxes so paid, and that accordingly these taxes were indirectly but actually paid by Calcasieu.

From the allegations of fact and the prayer of the petition it will be seen that the basis of plaintiffs' suit to recover the gas severance tax paid under protest is that the act imposing the tax is unconstitutional. Their first argument is that the severance tax imposed by the act is violative of the Commerce Clause (Clause 3, Section 8, Article 1) of the Constitution of the United States.

Plaintiffs argue that under the language of the act the incidence of the severance tax here involved is on the owner at the point of severance after the gas is severed; that the tax remains on the gas from the point of severance as it passes through Bel's processing plant and is delivered to the purchasers after passing through a meter into their respective pipelines; that three of these purchasers are interstate pipeline companies engaged in the transportataion of gas for resale in other states; that all of the gas produced by Bel is commingled in its processing plant and loses its identity, and that approximately two-thirds of this gas is sold by Bel for resale in interstate commerce. Under this argument they contend that the severance tax is not a local tax but a burden on interstate commerce.

(1) The answer to plaintiffs' argument is that the severance tax here involved is not on the gas itself and is not a property tax or a tax on the ownership of the gas, but, as stated by this court in *Gulf Refining Co. of Louisiana v. McFarland*, 154 La. 251, 97 So. 433; 264 U.S. 573, 44 S. Ct. 402, 68 L. Ed. 856, is "an excise tax, imposed upon the right to produce or sever the products from the land". In that case we said: "A severance tax, even though it is measured by the value of the property severed, is not a property tax; it is an excise tax upon the privilege of severing; just as an inheritance tax, even though measured by the value of the property inherited, is not a property tax, but an excise tax on the right of inheriting." See also *Bel Oil Corporation v. Fontenot*, 238 La. 1002, 117 So. 2d 571. As such, the tax is imposed at the moment of severance and not thereafter.

(2) According to the trial judge's view, with which we agree, the cases of *Oliver Iron Mining Co. v. Lord*, 262 U.S. 172, 43 S. Ct. 526, 67 L. Ed. 929; *Hope Natural Gas Co. v. Hall*, 274 U.S. 284, 47 S. Ct. 639, 71 L. Ed. 1049; and *Utah Power & Light Co. v. Pfost*, 286 U.S. 165, 52 S. Ct. 548, 76 L. Ed. 1038, are decisive and controlling, and refute plaintiffs' contention that the severance tax here involved is a burden on interstate commerce. To these decisions we add the case of *State of Alaska v. Arctic Maid*, decided by the United States Supreme Court in May, 1961, 366 U.S. 199, 81 S. Ct. 929, 6 L. Ed. 2d 227.

In *Oliver Iron Mining Co. v. Lord, supra*, Minnesota imposed on all those engaged in the business of mining or producing iron ore as owners or lessees within the state an occupation tax equal to 6 per cent of the value of the

ore mined or produced during the year. Oliver Iron Mining Company brought suit to prevent imposition of the tax, alleging that it violated the Commerce Clause of the federal Constitution and the Equal Protection Clause of the Fourteenth Amendment of that Constitution. The United States Supreme Court characterized the tax as an occupation tax laid on the business of mining ore, "which consists in severing it from its natural bed and bringing it to the surface where it can become an article of commerce". The court explained that practically all of Oliver Iron's output was mined to fill contracts with consumers outside Minnesota "and passes at once into the channels of interstate commerce", being loaded onto railroad cars for interstate transportation as it emerges from the mine, and that this state of facts formed the basis of Oliver Iron's contention that the Minnesota tax violated the Commerce Clause of the federal Constitution by burdening interstate commerce. The United States Supreme Court rejected this view of the matter, saying:

> "Plainly the facts do not support the contention. Mining is not interstate commerce, but, like manufacturing, is a local business, subject to local regulation and taxation. • • • Its character in this regard is intrinsic, is not affected by the intended use or disposal of the product, is not controlled by contractual engagements, and persists even though the business be conducted in close connection with interstate commerce.
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> • • • • •
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> "The ore does not enter interstate commerce until after the mining is done, and the tax is imposed only in respect of the mining. No discrimination against interstate commerce is involved.

> The tax may indirectly and incidentally affect such commerce, just as any taxation of railroad and telegraph lines does, but this is not a forbidden burden or interference."

Hope Natural Gas Company v. Hall, supra, involved a West Virginia privilege tax on persons engaged in the business of mining and producing various natural resources, among them natural gas, the amount of the tax to be equal to the value of the article as shown by the gross proceeds derived from its sale by the producer multiplied by, for natural gas, one and seventeen-twentieths of one per cent. Counsel for the gas company conceded that without violating the Commerce Clause a state may levy a privilege or occupation tax upon producers of natural gas reckoned according to the value of that commodity at the well, but argued that the tax under attack was laid on gross receipts derived from interstate commerce. The state court decree in the case required that the tax be computed upon the value of the gas at the well, and the United States Supreme Court held that as so computed the tax was valid.

Utah Power & Light Co. v. Pfost, supra, concerned an Idaho license tax of one-half mill per kilowatt hour on the manufacture, generation, or production within the state, for sale, of electricity and electrical energy. Utah Power & Light was a public utility engaged in generating electric power in Idaho and transmitting that power to consumers in Utah. It attacked the tax in question on the basis, *inter alia*, that it imposed a direct burden on interstate commerce in violation of Clause 3, Section 8, Article 1, of the federal Constitution and denied petitioner the equal protection of the laws and deprived it of property without due process of law in violation of

the Fourteenth Amendment. The public utility argued that the generation and transmission of electricity are inseparable and that hence both generation and transmission are interstate commerce. In concluding that the Idaho tax did not burden interstate commerce the United States Supreme Court distinguished conversion of the mechanical energy of falling water into electrical energy and transmission of that electrical energy to out-of-state consumers, and found that while conversion and transmission were substantially instantaneous, they were nevertheless essentially separable and distinct operations. The *Oliver Iron* and *Hope Natural Gas* cases, both *supra*, were relied on as controlling on the question of the validity of the Idaho license tax on the generation within the state of electricity.

State of Alaska v. Arctic Maid, supra, involved the validity of an Alaskan tax of 4 per cent of the value of salmon, etc., caught in the waters off the coast of Alaska and shipped interstate. The court held that Oliver Iron Mining, along with another case, was dispositive of the controversy. The court said:

> "The Oliver Iron case is indeed a first cousin to the present case. Here, as there, the tax is an occupation tax. Here, as there, the market for the product obtained locally is interstate, the taking being a step in a process leading to an interstate market. In both the local product is promptly loaded for interstate shipment. But in each there is a preliminary local business being conducted—an occupation made up of a series of local activities which the State can constitutionally reach."

(3 The tax here is on the right to sever or produce the gas and is imposed at the moment of severance, be-

fore its taking into interstate commerce. The right to sever or produce gas from the soil of this state cannot in any sense be considered interstate commerce, but is a local right subject to state taxation. To paraphrase what was said in *Oliver Iron Mining Co. v. Lord, supra*, the gas does not enter into interstate commerce until after it is severed or produced from the soil, and the tax is imposed only in respect of the right of severing or producing; the tax may indirectly and incidently affect such commerce, just as taxation of railroad and telegraph lines does, but this is not a forbidden burden or interference.

After severance or production the gas may go into interstate commerce, but the severance and the transmission in interstate commerce are separate and distinct operations, and the tax here involved is imposed before the transmission into interstate commerce has begun. That taxation by the state of the right to produce or sever is a local activity separate from the transmission in interstate commerce, is made clear and evident by the fact that no other state into or through which the gas may flow can legally impose a tax on the right to sever the gas from the soil of Louisiana.

(4) Plaintiffs argue that since Bel is a natural gas company within the meaning of the Natural Gas Act (15 U.S.C.A. Sec. 717 *et seq.*) adopted by the United States Congress, and since after Bel's gas leaves the wellhead or "at the point of severance where such gas starts into interstate commerce", Bel's operations are subject to the exclusive control of, and are regulated by, the Federal Power Commission, the severance tax is not a local tax but is a burden on interstate commerce. In

support of this argument plaintiffs cite and rely on *Michigan-Wisconsin Pipe Line Co. v. Calvert*, 347 U.S. 157, 74 S. Ct. 396, 98 L. Ed. 583; *Louisiana-Nevada Transit Co. v. Fontenot*, 233 La. 600, 97 So. 2d 409; *United Fuel Gas Co. v. Hallanan*, 257 U.S. 277, 42 S. Ct. 105, 66 L. Ed. 234; *Eureka Pipe Line Co. v. Hallanan*, 257 U.S. 265, 42 S. Ct. 101, 66 L. Ed. 227; *Phillips Petroleum Co. v. State of Wisconsin*, 347 U.S. 672, 74 S. Ct. 794, 98 L. Ed. 1035; *Deep South Oil Co. of Texas v. Federal Power Comm.*, 5 Cir., 247 F. 2d 882; *Shell Oil Co. v. Federal Power Comm.*, 5 Cir., 247 F. 2d 900; *Humble Oil & Refining Co. v. Federal Power Comm.*, 5 Cir., 247 F. 2d 903; and *Saturn Oil & Gas Co. v. Federal Power Comm.*, 10 Cir., 250 F. 2d 61. These cases, however, are inapposite in the instant proceeding. The Michigan-Wisconsin, Louisiana-Nevada, and two Hallanan cases involve state taxes that burdened interstate commerce, either because the state had delayed the incidence of the tax beyond the step where production and processing had ceased and transmission in interstate commerce had begun, as in the Michigan-Wisconsin and Louisiana-Nevada cases, or because the state had attempted to tax the transportation of oil and gas moving in interstate commerce, as in the two Hallanan cases. The Phillips Petroleum, Deep South, Shell Oil, Humble Oil, and Saturn Oil cases concern the status of petitioners therein as natural gas companies within the meaning of the Natural Gas Act and the resulting regulation by the Federal Power Commission of petitioners' sales of natural gas destined for interstate commerce. Not one of these cases is authority for the proposition that the state cannot impose a severance or production tax on the right to sever or produce gas imposed at the moment of severance and before its taking into interstate commerce, the right

taxed and transmission in interstate commerce being separate and distinct operations.

(5-8) Plaintiffs' next contention is that the severance tax act is violative of Article 10, Section 1, of the Louisiana Constitution and the Due Process clauses of the state and federal Constitutions. Counsel argue that R.S. 47:633 as amended in Section (9) (g) provides that the severance tax shall not accrue on the severance of gas used in the manufacture of carbon black; that this exemption is a gross, unreasonable discrimination against Calcasieu, since Calcasieu uses gas in connection with its manufacture of paper from natural pulpwood; that this provision does not afford Calcasieu equal protection of the laws and deprives it of property without due process of law.

This contention also is without merit. The Legislature of a state may exercise a wide discretion in selecting the subjects of taxation. It may select those who are engaged in one class of business and exclude those engaged in others, if all similarly situated are brought within the class and all members of the class are dealt with according to uniform rules. *Oliver Iron Mining Co. v. Lord, supra.*

Neither the Fourteenth Amendment to the federal Constitution nor the equality and uniformity requirements of the state Constitution prohibit the making of classifications in state legislation relating to taxation. Legislative classifications in tax matters are presumptively valid, the burden being on the challenger to prove that such a classification does not rest upon a reasonable basis, and will not be disturbed by the judiciary in the

absence of unreasonable, discriminatory, or arbitrary action. *51 Am. Jr. 230, 234, Taxation, secs. 173, 174.*

In *Heisler v. Thomas Colliery Co.*, 260 U.S. 245, 43 S. Ct. 83, 67 L. Ed. 237, it was contended that Pennsylvania could not tax owners of anthracite coal mines and not tax the owners of bituminous coal mines, as both kinds of coal were fuels and necessarily must be associated in the same class for taxation in disregard of whatever differences might exist between them. The issue before the federal Supreme Court was what resemblances or differences in objects justify their inclusion in, or their exclusion from, a particular class. The court observed that it would be "commonplace and wearisome to enlarge much upon the principle that presides in and determines the classification of objects. It is too necessary and too familiar in the affairs of life. * * * It is the process of considering objects together or in separation as determined by their properties or some of them, and the purpose we have in mind". The court concluded that any classification was permissible which had a reasonable relation to some permitted end of governmental action.

There is nothing illogical in classifying companies that manufacture paper differently from companies that manufacture carbon black. Obviously for some reason the Legislature wanted to favor the manufacture of carbon black. Bel Oil and Calcasieu allege nothing in their petition to show that this classification does not rest on a reasonable basis, or that it is unreasonable, discriminatory, or arbitrary.

Although he sustained the exception of no cause or right of action as to Bel on other grounds, the trial judge

concluded that the attacks levelled against the constitutionality of the statute in this case were without merit. He dismissed the suit as to Calcasieu on the ground that Bel, and Bel only, was the severer within the meaning of the Louisiana severance tax statute; that Bel, and Bel only, paid the tax under protest, and that any liability of Calcasieu for the tax arises under its contract with Bel and not under the provisions of the Louisiana statute relative to severance taxes or payment under protest.

The trial judge in this ruling as to Calcasieu may be entirely correct. As we view the matter, however, we need not discuss his ruling because we have found that the tax is not unconstitutional on the grounds urged by plaintiffs. Accordingly Bel itself has no right in this suit to a judgment for the amount of these taxes, and certainly Calcasieu, which derives any right it may have from Bel does not.

(9) Plaintiffs in brief set out a short legislative history of the Louisiana gas gathering and severance tax acts. They state correctly that this court in *Bel Oil Corporation v. Fontenot*, 238 La. 1002, 117 So. 2d 571, held that the gas gathering tax there under consideration was unconstitutional as an additional tax on gas leases or rights which was prohibited by Section 21, Article 10, of our state Constitution. By Act 2 of the Extraordinary Session of 1958 the Legislature increased the severance tax authorized by Article 10, Section 21, of the Louisiana Constitution on the right to sever gas from .3¢ per thousand cubic feet to 2.3¢ per thousand cubic feet. Plaintiffs argue that the additional severance tax as shown by the history of the acts is, in effect, the same tax imposed under the gas gathering statute which was declared by this court to be unconstitutional, and that consequently

the evidence tax should likewise be declared unconstitutional as violative of Section 21, Article 10, of the 1921 Constitution of this state. They urge that this court should not permit the Legislature to effect indirectly what the courts have held it could not do directly.

There is no merit in this contention. The severance tax and the gas gathering tax are separate and distinct taxes, and, as observed by the trial judge "The severance tax is a tax completely different in concept and application from the earlier gas gathering taxes * * * ". The severance tax is not susceptible to attack on the same ground on which the gas gathering tax was found to be unconstitutional, for the imposition of this severance tax is specifically authorized by Article 10, Section 21, of our Constitution.

In this case the trial judge has given written reasons for his judgment maintaining the exception, which we have found of considerable aid to us in understanding and determining the complex issues raised.

For the reasons assigned the judgment appealed from is affirmed; plaintiffs-appellants are to pay all costs.

APPENDIX B.

SECTIONS 632, 633, 635, 640, 641 AND 645, 1950 LA. R.S. 47—AS AMENDED BY ACT 2 OF EXTRA-ORDINARY SESSION OF 1958, REPORTED IN WEST'S SUPPLEMENT

Sec. 632. Taxes payable by owners; lien and privilege created

These taxes shall be paid by the owner or proportionately by the owners thereof at the time of the severance and become due and exigible monthly, as herein provided; they shall operate as a first lien and privilege on the natural resources which lien and privilege shall follow the natural resources into the hands of third persons whether in good or bad faith, and whether the same be found in a manufactured or unmanufactured state. In addition, oil and gas leases, interests and minerals, mineral rights, royalty interests, timber contracts, and rights of any kind to the ownership of any natural resource severed from the soil or water, shall be subject to seizure and sale for the payment of the tax levied in this Part in preference to all other claims, liens and privileges. As amended Acts 1958, Ex. Sess., No. 2, Sec. 1.

Sec. 633. Rates of tax

The taxes on natural resources severed from the soil or water, levied by R.S. 47:631 shall be predicated on the quantity severed and shall be paid at the following rates:

* * * * *

LRS 47:632, etc.

(9) On gas, two and three-tenths cents per thousand cubic feet, measured at a base pressure of 15,025 pounds per square inch absolute and at the temperature base of 60 degrees Fahrenheit, provided that whenever the conditions of pressure and temperature differ from the above basis, conversion of the volume from these conditions to the above bases shall be made in accordance with the Ideal Gas Laws with correction for deviation from Boyle's Law, which correction must be made unless the pressure at the point of measurement is 200 pounds per square inch gauge, or less; all in accordance with methods and tables generally recognized by and commonly used in the natural gas industry. For all purposes of computing standard cubic feet of gas under this Section the barometric pressure shall be assumed to be 14.7 pounds per square inch absolute at the place of measurement. In the case of gas produced from an oil well designated as such by the department of conservation, which has been determined by the collector to have a well head pressure of fifty pounds per square inch gauge or less under operating conditions, (or, in the case of gas rising in a vaporous state through the annular space between the casing and tubing of such oil well and released through lines connected with the casinghead, gas which has been determined by the collector to have a casinghead pressure of 50 pounds per square inch gauge or less under operating conditions), the rate shall be one and three-tenths cent per thousand cubic feet. In the case of gas produced from a well determined by the collector of revenue to be incapable of producing an average of 250,000 cubic feet of gas per day, the tax rate applicable to the gas severed from such well shall be one and three-tenths cent.

On and after August 1, 1960, the tax rates provided in this Paragraph 9 shall revert to three-tenths cent per thousand cubic feet. In the event the gas gathering taxes imposed by R.S. 47:671 through 47:681 are ultimately held to be constitutional as not violative of the commerce clause of the United States Constitution, by the final decision of a court of last resort having jurisdiction, prior to August 1, 1960, then the rates hereunder shall revert to three-tenths cent per thousand cubic feet effective as of the time the gas gathering taxes again become effective as provided for in R.S. 47:681.

The tax shall not accrue: (a) on the severance of gas which is subsequently restored to the formation of the earth in Louisiana; (b) on the severance of gas, when produced from oil wells and vented or flared directly into the atmosphere, provided that it is the intent of this Chapter that gas injected into an oil well to be used in lifting oil by the method commonly known as "gas lift" shall not be excluded or exempt from the severance tax, and such gas shall not be deemed to be produced from the gas lift well; (c) on the severance of gas used for fuel in connection with the operation and development for, or production of, oil or gas in the field where produced; and (b) on the severance of gas used in the manufacture of carbon black. As amended Acts 1958, Ex. Sess., No. 2, Sec. 2.

* * * * *

Acts 1958, Ex. Sess., No. 2, Sec. 7, provided: "If any provision of this Act or the application thereof is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provisions or applications, and

to this end the provisions of this Act are hereby declared severable; more particularly, if any exclusion or exclusions set forth in R.S. 47:633 hereof are declared invalid, it is the intent of the Legislature that the taxes herein imposed shall apply to the gas which otherwise would have been excluded had the provision not been declared invalid. If any provision of this Act or the application thereof is held invalid as to any particular group of persons or portion or phase of the tax imposed, such invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provisions or applications, and to this end the provisions of this Act are hereby declared severable."

Sec. 635. Reports and payment of taxes by severers

The taxes levied hereunder shall be due and shall be payable monthly. Every person severing any natural resources from the soil or water of the state, shall, on or before the 20th day of the month following the month in which this tax becomes effective, and on or before the 20th day of each month thereafter, file with the collector, a statement, on forms secured from him, of the business conducted by such person during the preceding month, showing the kind of natural resources and the gross quantity of each so severed or produced, the names of the owners at the time of severance, the portion owned by each, and any other reasonable and necessary information pertaining thereto that the collector may require for the proper enforcement of the provisions of this Part; there shall also be shown on these monthly reports the location of each natural resource and the place or places where produced or severed from the soil or water. Any such report shall contain or be verified by a written declaration that it is made under the penalties imposed for perjury.

LRS 47:632, etc.

Except as otherwise provided in this Part, the making of the reports, and the payment of the taxes, shall be by those actually engaged in the operation of severing, whether it be the owner of the soil, or other person severing from the soil of another, or the owner of any such natural resource severing from the soil of another.

The reporting taxpayer shall collect or withhold out of the value of the products severed, the proportionate parts of the total tax due by the respective owners of the natural resources at the time of severance.

The collector may require any person engaged in severing natural products from the soil or water to furnish any additional information necessary for the purpose of computing the amount of tax due under this Part.

The first tax due under this Part shall be that levied for the month beginning 7:00 A.M., December 1, 1958. The collector is authorized to provide for such tax to be reported and paid along with that levied for the first two months of the quarter ending December 31, 1958, under the previously existing statute, except that both such periods shall be due and payable on or before January 20, 1959. As amended Acts 1958, Ex. Sess., No. 2, Sec. 3.

Sec. 640. Reports by purchasers

On or before the 20th of the month following the month in which this tax becomes due, and on or before the 20th day of each month thereafter, purchasers and other persons dealing in any natural product severed from the soil or water in Louisiana shall file with the collector a monthly statement on forms secured from him,

containing or verified by a written declaration that it is made under the penalties imposed for perjury, showing the names and addresses of all persons from whom they have purchased any such natural product during that month, together with the total quantity of and gross price paid for, each such natural product. At the time of making the report the purchaser or other dealer shall pay to the collector the amount of tax deducted or withheld, or that may be due under this Part.

The failure of any person, firm, corporation or association of persons to make reports and pay to the collector the amount of tax owed, deducted or withheld as herein provided shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars for each fallure.

The imposition of the fine imposed in this Section shall not be construed as releasing the purchaser or dealer from paying to the collector the amount of tax owed, deducted or withheld by him. As amended Acts 1958, Ex. Sess., No. 2, Section 4.

Sec. 641. Delinquent tax.

The tax provided by this Part shall become delinquent after the date fixed for each monthly report to be filed in the office of the collector, and from such time shall be subject to the addition of interest, penalties, and costs as provided in Chapter 18, Subtitle II of this Title.[1] As amended Acts 1958, Ex. Sess., No. 2, Section 5.

Sec. 645. Disposition of collections

All taxes levied in this Part shall be collected monthly

[1] R.S. 47:1501 *et seq.*

by the collector and, except as otherwise provided herein, shall be paid by him into the state treasury not later than the tenth day of the month following the month in which collections are made. When so paid, all of the severance taxes collected on oil, gas, salt and shells, not otherwise allocated herein, together with all of the severance taxes collected on all other natural resources severed from the soil or water (including salt content in brine), shall be credited by the auditor and treasurer to the severance tax fund of the state of Louisiana.

One-third of the severance taxes collected on sulphur not to exceed one hundred thousand dollars to any parish in any one year, and one-fifth of the severance taxes collected on oil, gas, salt, coal, lignite, ores, marble, stone, gravel, sand and shells shall be allocated to the parish within which the taxes are collected and shall be credited to such parish by the auditor and treasurer for allocation to the recipients of taxes as provided in R.S. 47:646, provided such allocation and credit shall not exceed an aggregate total of two hundred thousand dollars to any parish in any one year. When these limits have been reached, there shall be no further allocation, and all additional collections for the year shall be credited in full to the severance tax fund. As amended Acts 1952, No. 128, Section 1; Acts 1958, Ex. Sess., No. 2, Section 6.

APPENDIX C.

GAS GATHERING TAX ACTS

LOUISIANA REVISED STATUTES 47:671, 673 and 678:

§ 671. Imposition of tax

In addition to all other licenses and taxes levied and assessed in the State of Louisiana, there is hereby levied upon every person engaged in gathering gas produced in this state, an excise, license or privilege tax, for the privilege of engaging in such business, at the rate of one cent (1¢) per thousand (1,000) cubic feet (corrected to a base pressure of 15,025 pounds per square inch, absolute pressure) of gas gathered.

§ 673. Definitions

For all purposes of this Part the following terms shall have the means ascribed to them in this Section:

(1) "Gas" means natural gas and casinghead gas.

(2) "Gathering gas" means the first taking or the first retaining of possession of gas produced in Louisiana for transmission through a pipe line, after the severance of such gas, and after the passage of such gas through any separator, drip, trap or meter that may be located at or near the well. In the case of gas containing gasoline or liquid hydrocarbons that are removed or extracted in commercial quantities at a plant by scrubbing, absorption, compression, or any similar process, the term "gathering gas" means the first taking or the first retaining of possession of such gas for transmission

through a pipeline after such gas has passed through the outlet of such plant, provided that the license or tax levied is not levied against or charged to any royalty interest of any lessor or vendee or assignee of such royalty interest.

§ 678. Imposition of additional tax: duration

In addition to all other licenses and taxes levied and assessed in the state of Louisiana, and in addition to all other taxes levied thereon, there is hereby levied upon every person engaged in gathering gas produced in this state an excise, license or privilege tax for the privilege of engaging in said business, at the rate of one cent per thousand cubic feet (corrected to a base pressure of 15,025 pounds per square inch, absolute pressure) of gas gathered, which tax shall be levied and collected for a period of two years beginning August 1, 1958 and continuing through and including July 31, 1960. Added Acts 1958, No. 8, § 1.

APPENDIX D.

LA. R.S. 47:681.1

Sec. 681.1 Suspension of taxes levied by R.S. 47:671-47:681

A. The levy of taxes under Section 671 through 681, inclusive, of Title 47 of the Louisiana Revised Statutes of 1950 is hereby suspended, effective 7:00 A. M. December 1, 1958, and shall remain suspended until the question of whether such taxes are valid and constitutional and are not violative of the commerce clause of the United States Constitution has been judicially determined by the final decision of a court of last resort having jurisdiction, so that during the period of suspension there shall be no such taxes levied. In the event the taxes are so judicially determined to be valid and constitutional, this suspension shall terminate commencing 7:00 A. M. the first day of the month following the finality of such judicial determination. Nothing herein contained shall serve to extend the time or term of the levy of any of such taxes or any part thereof if same is limited in the statute enacting or levying same.

B. In the event such taxes are declared invalid or unconstitutional as to gas entering interstate commerce, such taxes shall not be levied as to gas entering intrastate commerce. Added Acts 1958, Ex. Sess., No. 3, Sec. 1.

Acts 1958, Ex. Sess., No. 3, Sec. 2, provided: "Nothing herein shall be construed as a waiver by the State of any accrued taxes, penalties or interest due the State under the provisions of Section 671 through 681, inclu-

LRS 47:681.1

sive, of Title 47 of the Louisiana Revised Statutes of 1950. Such provisions shall remain in full force and effect for the collection of all taxes, penalties, and interest due thereunder for all gas gathered prior to 7:00 A. M. December 1, 1958, except that the reports and payments due 30 and 40 days respectively after the close of the quarter shall be due and the taxes paid on or before December 30, 1958."

APPENDIX E.

LSA R.S. 47:1576

Sec. 1576. Payment of Tax under protest; remedy at law for recovery

A right of action is hereby created to afford a remedy at law for any person aggrieved by the prohibition of courts restraining the collection of tax, penalty, interest or other charges imposed in this Sub-title. The person resisting the payment of any amount found due by the collector, or of enforcement of any provisions of this Sub-title, shall pay the amount found due to the collector and at that time shall give the collector notice of his intention to file suit for the recovery thereof. Upon receipt of this notice, the amount paid shall be segregated and held by the collector or his duly authorized representatives for a period of thirty days. If suit is filed within the thirty-day period for the recovery of such amount, the funds segregated shall be further held pending the outcome of the suit. If the person prevails, the collector shall refund the amount to the claimant, with interest at the rate of 2% per annum covering the period from the date said funds were received by the collector to the date of refund.

This Section shall afford a legal remedy and right of action in any state or federal court having jurisdiction of the parties and subject matter, for a full and complete adjudication of any and all questions arising in the enforcement of this Sub-title, as to the legality of any tax accrued or accruing or the method of enforcement thereof. In such action, service of process upon the collector shall be sufficient service, and he shall be the sole necessary and proper party defendant in any such suit.